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CORPORATIONS—STOCKHOLDERS' RIGHTS INCIDENT TO MEMBERSHIP—RIGHT OF HOLDER OF VOTING TRUST CERTIFICATES TO APPLY FOR RECEIVERSHIP.—The plaintiff owned voting trust certificates in the defendant corporation. He brought a bill in equity for the appointment of a receiver with out joining the trustees or previously making application to them. The New Jersey Laws of 1896 (p. 298, c. 185) entitled "any creditor or shareholder" to institute proceedings to wind up an insolvent corporation. *Held*, that the plaintiff is a proper party to bring such a bill. *O'Grady v. U. S. Independent Telephone Co.*, 71 Atl. 1040 (N. J., Ct. Err. & App.).

A *cestui* has only a right *in personam* against his trustee. Hence he can proceed in equity to enforce even an equitable demand against a third person only when the trustee is either unwilling or unable to proceed himself. *Morgan v. Kans. Pac. Ry. Co.*, 15 Fed. 55. And it follows that in such cases the trustee is a necessary party. See AMES, CAS. ON TRUSTS, 2 ed., 67. In the ordinary voting trust the stockholder surrenders his certificate representing his right against the corporation to the voting trustees and receives in return a voting trust certificate giving a right against the corporation only indirectly through the trustees. It is therefore impossible to support the principal case in not requiring the trustees to be joined. The New Jersey courts decided that "creditor" as used in this statute means a person entitled to share in the assets. *Gallagher v. Asphalt Co. of Am.*, 65 N. J. Eq. 258. They then deduced that a "stockholder" could be only a person also so entitled, and that one who had surrendered both his beneficial interest and his certificate, although still registered on the corporation's books, was not a stockholder, from which position it was but a short step to the present decision. *Hoober v. Basic Co.*, 69 N. J. Eq. 679.

COURTS—STATE COURTS—JURISDICTION OF ACTION AGAINST UNITED STATES OFFICER.—Land was conveyed to the United States subject to the condition that if it was not used for the purposes of the commission of fish and fisheries it should revert to the plaintiffs. The land was not so used, and the plaintiffs brought a writ of entry in the state court against the tenant in possession, who was the superintendent of the station of the United States fish commission. The defendant contended that his assertion of a right as an officer acting under the authority of the United States deprived the state courts of jurisdiction. *Held*, that the court has jurisdiction. *Fay v. Locke*, 87 N. E. 753 (Mass.).

The United States Supreme Court decided in a recent case that proceedings to enjoin a state attorney-general did not constitute a suit against the state within the prohibition of the Eleventh Amendment. *Ex parte Young*, 209 U. S. 123. The real rationale of that decision seems applicable here: whether the case is maintainable or not depends on whether the defendant officer is personally liable as a principal for his action, or whether the right involved demands that the United States be joined as a necessary party defendant. *Cf.* 21 HARV. L. REV. 527.

COVENANTS RUNNING WITH THE LAND—RUNNING OF BURDEN AGAINST PURCHASER OF COVENANTOR'S TITLE AT FORECLOSURE SALE.—The defendant's predecessor in title covenanted with the plaintiff to maintain a crossing over the plaintiff's right of way to which it was entitled by its franchise. The defendant was a purchaser at a foreclosure sale of a preëxisting mortgage of all its predecessor's property. *Held*, that the covenant does not run with the land. *Evansville, etc., Co. v. Evansville Belt Ry. Co.*, 87 N. E. 21 (Ind. App.). See NOTES, p. 597.

DAMAGES—MEASURE OF DAMAGES—DAMAGES FOR MENTAL SUFFERING IN ACTION FOR CONVERSION.—The defendant company's conductor, after a public altercation with the plaintiff, a passenger, wrongfully took up his commutation ticket. The plaintiff brought an action for conversion. *Held*, that, in addition to the value of the ticket, the plaintiff can recover damages for

the mental anguish suffered because of the publicity of the conversion. *Harris v. Delaware, L. & W. R. Co.*, 72 Atl. 50 (N. J., Sup. Ct.).

Compensation for mental anguish inflicted on the plaintiff may be given whether the act of the defendant is a breach of contract or a tort. Under the general rule as to liability on a contract, it must appear, however, that such injury was in the reasonable contemplation of the parties when the contract was made. See 21 HARV. L. REV. 541. In personal torts redress is generally given, if at all, for any mental suffering resulting from the wrongful act. See 20 HARV. L. REV. 149. There are few cases involving rights in real or personal property where any question of these consequential damages is presented; but in an action of trespass for an unlawful ejectment compensation is generally given for any indignity suffered thereby. *Moyer v. Gordon*, 113 Ind. 282. And damages for mental anguish resulting from the disinterment of a body may be recovered in an action of trespass. *Bessemer Land & Improvement Co. v. Jenkins*, 111 Ala. 135. But as personal property is not of such a character that any sense of personal insult would naturally accompany its deprivation or disturbance, and since mental suffering is therefore improbable, such enhanced damages should not be allowed. This principle has restricted such recovery in actions for trespass to realty. *White v. Dresser*, 135 Mass. 150. Cf. 22 HARV. L. REV. 533. And it is evidently the ground for the distinctions taken in the cases. See 4 HARV. L. REV. 197.

DESCENT AND DISTRIBUTION — DEVOLUTION OF CHARITABLE TRUST PROPERTY ON TERMINATION OF TRUST. — A benefit society consisted of honorary members, who paid subscriptions but could derive no benefits, and benefited members who paid weekly contributions which entitled them to certain annuities. Only persons who had attended a certain school were eligible as benefited members. This school had been closed for over sixty years and only two benefited members survived. The surplus fund was claimed by these members and by the honorary members as a resulting trust. That part subscribed by the honorary members was claimed by the Attorney-General as a charitable trust. *Held*, that the whole fund, after payment of the annuities, belongs to the Crown as *bona vacantia*. *Braithwaite v. Attorney-General*, [1909] 1 Ch. D. 510.

Whether a society of this sort comes within the legal definition of a charity depends upon its purpose as determined by its rules. See *In re Clark's Trust*, 1 Ch. D. 497. Thus, where it is provided that the receipt of benefits shall be conditional upon the poverty of the recipient, the society is a charity. *In re Buck*, [1896] 2 Ch. 727. The funds may then be administered *cy-près*. *Hayter v. Trego*, 5 Russ. 113. But where the purpose is temporary, and those to be benefited are definite, there is a resulting trust for the benefit of the subscribers. *Re Trusts of the Abbott Fund*, [1900] 2 Ch. 326. See 14 HARV. L. REV. 235. Otherwise the funds will be treated as *bona vacantia*. *Cunnack v. Edwards*, [1896] 2 Ch. 679. In the principal case the society was not a charity; for the benefited members were legally entitled to annuities, irrespective of their poverty. But they had no further interests. And since under the statute the subscribers' contributions became the absolute property of the society, there could be no resulting trust. Clearly, therefore, the fund should go to the Crown.

EASEMENTS — MODES OF ACQUISITION — EXTENSION BY ACCRETION TO SOIL OF SERVIENT TENEMENT. — A public street was laid out over riparian land to high-water mark, the easement being secured by eminent domain proceedings. By gradual alluvial deposits the high-water mark was moved seawards. *Held*, that the land acquired by accretion at the end of the street is subject to the easement of the public to the changing high-water mark. *State v. Yates*, 71 Atl. 1018 (Me.).

That a right of way once acquired to navigable water shift with the water-line, is as desirable as that property once riparian remain so. A street dedicated to the public has been held to extend automatically over alluvial deposits,